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Attorneys for MARIA CAUDILLO

**UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF CALIFORNIA**

<p>MARIA CAUDILLO,</p> <p>Plaintiff,</p> <p>v.</p> <p>PORTFOLIO RECOVERY ASSOCIATES, LLC,</p> <p>Defendant.</p>	<p>Case No: '12CV200 IEG RBB</p> <p>COMPLAINT FOR VIOLATIONS OF THE FEDERAL FAIR DEBT COLLECTION PRACTICES ACT AND VIOLATIONS OF THE ROSENTHAL ACT</p>
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INTRODUCTION

1. Plaintiff Maria Caudillo, through her counsel, brings this action to challenge the acts of Portfolio Recovery Associates, LLC (hereinafter "PRA") regarding attempts by PRA to unlawfully and abusively collect a debt allegedly owed by Plaintiff, and this conduct caused Plaintiff damages.

2. Plaintiff makes these allegations on information and belief, with the exception of those allegations that pertain to a plaintiff, or to a plaintiff's counsel, which Plaintiff alleges on personal knowledge.

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3. While many violations are described below with specificity, this Complaint alleges violations of the statutes cited in their entirety.

4. Any violations by Defendants were knowing, willful, and intentional, and Defendants did not maintain procedures reasonably adapted to avoid any such violation.

JURISDICTION AND VENUE

5. Jurisdiction of this Court arises pursuant to 28 U.S.C. § 1331, 15 U.S.C. § 1692(k), and 28 U.S.C. § 1367 for supplemental state claims.

6. This action arises out of Defendant's violations of the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692 et seq. ("FDCPA") and the Rosenthal Fair Debt Collection Practices Act, California Civil Code §§ 1788-1788.32 ("Rosenthal Act").

7. As PRA does business in the State of California, and committed the acts that form the basis for this suit with the intent to cause effects in the State of California, this Court has personal jurisdiction over PRA for purposes of this action.

8. Venue is proper as PRA does business in the County of San Diego, the acts at issue took place in the County of San Diego, and PRA has a business location in the County of San Diego, in the central district of San Diego.

PARTIES

9. Plaintiff is a natural person, an adult, as defined in California Civil Code § 1761(g), and resides in San Diego County, California.

10. Plaintiff is informed and believes and thereon alleges that Defendant PRA is a Delaware limited liability company, based in Virginia and doing business in the State of California.

11. Defendant PRA is a person who uses an instrumentality of interstate commerce or the mails in a business the principal purpose of which is the collection of debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another and is therefore a debt collector as

1 that phrase is defined by 15 U.S.C. § 1692a(6).

2 12. Defendant PRA, in the ordinary course of business, regularly, on behalf
3 of himself, himself, or others, engages in debt collection as that term is defined by
4 California Civil Code § 1788.2(b), is therefore a debt collector as that term is defined
5 by California Civil Code § 1788.2(c).

6 13. Defendant PRA claims that Plaintiff is obligated to pay a debt, and
7 therefore Plaintiff is a “consumer” as that term is defined by 15 U.S.C. § 1692a(3).

8 14. Plaintiff is a natural person from whom a debt collector sought to collect
9 a consumer debt which was due and owing or alleged to be due and owing from
10 Plaintiff, and is a “debtor” as that term is defined by California Civil Code §
11 1788.2(h).

12 15. This case involves money, property or their equivalent, due or owing or
13 alleged to be due or owing from a natural person by reason of a consumer credit
14 transaction. As such, this action arises out of a consumer debt and “consumer credit”
15 as those terms are defined by Cal. Civ. Code § 1788.2(f).

16 **FACTS COMMON TO ALL CAUSES OF ACTION**

17 16. On July 21, 2011, PRA filed a complaint (“State Court Complaint”) in
18 the Superior Court of California for the County of San Diego against Ms. Caudillo, in
19 the matter of Portfolio Recovery Associates, LLC v Maria Caudillo, et al, case
20 number 37-2011-00077933-CL-CL-SC.

21 17. A copy of this July 21, 2011 State Court Complaint is attached as
22 Exhibit A.

23 18. In the above State Court Complaint, later served on Ms. Caudillo, PRA
24 alleged that PRA furnished “purchases and/or cash advances” to Ms. Caudillo on a
25 credit card account issued by PRA, and that PRA was entitled to an award of
26 attorney’s fees.

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1 19. In fact, PRA did not ever furnish “purchases and/or cash advances” to
2 Ms. Caudillo on any credit card, nor did PRA issue any credit card to Ms. Caudillo,
3 and PRA had no legal basis to request attorney’s fees.

4 **ALLEGATIONS SPECIFIC TO CERTAIN CAUSES OF ACTION**

5 **FIRST CLAIM FOR RELIEF**

6 **(Violations of the FDCPA by PRA)**

7 20. Plaintiff re-alleges and incorporates herein by reference the allegations
8 contained in the paragraphs above.

9 21. Defendant PRA violated the FDCPA. Defendant’s violations include, but
10 are not limited to the *following*:

- 11 a. 15 U.S.C. §1692e by making a false, deceptive or misleading
12 misrepresentation in the collection of a debt;
13 b. 15 U.S.C. §1692e(2) by misrepresenting the character, amount and legal
14 status of a debt;
15 c. 15 U.S.C. §1692e(5) by threatening to take an action that cannot legally
16 be taken or was not intended to be taken;
17 d. 15 U.S.C. §1692e(10) by use of a false representation or deceptive means
18 to collect a debt;
19 e. 15 U.S.C. §1692f(1) by collection of an amount not expressly authorized
20 by an agreement creating a debt, or by law.

21 22. Plaintiff is entitled to actual damages sustained as a result of Defendant’s
22 conduct, in an amount according to proof; to statutory damages of \$1,000; costs of
23 the action; and reasonable attorney’s fees, all pursuant to 15 U.S.C. §1692k.

24 **SECOND CLAIM FOR RELIEF**

25 **(Violations of the Rosenthal Act by PRA)**

26 23. Plaintiff repeats, re-alleges, and incorporates by reference all the
27 allegations contained in the paragraphs above.

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24. Based on information and belief, Defendant PRA's acts and omissions violated *California Civil Code § 1788 et seq.*, including, but not limited to the following sections: *California Civil Code §§ 1788.17 and 1788.13.*

25. Based on information and belief, Defendant's violations of *California Civil Code § 1788.17*, which incorporates several of the provisions of the FDCPA, include, but are not limited to, the following: Defendant's violations include, but are not limited to the *following*:

- a. *15 U.S.C. §1692e* by making a false, deceptive or misleading misrepresentation in the collection of a debt;
- b. *15 U.S.C. §1692e(2)* by misrepresenting the character, amount and legal status of a debt;
- c. *15 U.S.C. §1692e(5)* by threatening to take an action that cannot legally be taken or was not intended to be taken;
- d. *15 U.S.C. §1692e(10)* by use of a false representation or deceptive means to collect a debt;
- e. *15 U.S.C. §1692f(1)* by collection of an amount not expressly authorized by an agreement creating a debt, or by law.

26. Defendant also violated the Rosenthal Act at Civil Code § 1788.13 by making a false representation that the debt alleged may be increased by the addition of attorney's fees, when in fact no such fees may legally be charged.

27. Defendants' violations of the Rosenthal Act were willful and knowing, thereby entitling Plaintiff to statutory damages pursuant to *Civil Code § 1788.30(b)*.

28. As a proximate result of the violations of the Rosenthal Act committed by Defendant, Plaintiff is entitled to any actual damages pursuant to California Civil Code § 1788.30(a); statutory damages in an amount up to \$1,000.00 each pursuant to California Civil Code § 1788.30(b); and, reasonable attorney's fees and costs pursuant to California Civil Code § 1788.30(c) from Defendant.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that judgment be entered against Defendant PRA, and pray for the following relief:

1. An award of actual damages pursuant to 15 U.S.C. § 1692k(a)(1) against Defendant PRA and for Plaintiff;
2. An award of statutory damages of \$1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2)(A) against Defendant PRA and for Plaintiff;
3. An award of actual damages pursuant to California Civil Code § 1788.30(a) against Defendant PRA and for Plaintiff;
4. An award of statutory damages of \$1,000.00 pursuant to California Civil Code § 1788.30(b) against Defendant PRA and for Plaintiff;
5. An award of an additional \$2,000.00 in statutory damages pursuant to California Civil Code §§ 3345;
6. An award of costs of litigation and reasonable attorney's fees, pursuant to 15 U.S.C. § 1692k(a)(3) and California Civil Code § 1788.30(c) against Defendant PRA; and
7. Such other and further relief this court may deem just and proper.

Respectfully submitted,

Dated: January 25, 2012

s/Stephen G. Recordon
Attorney for Plaintiff
E-mail: sgrecordon@aol.com

EXHIBIT A

BY FAX

JUL 20

COURT

CALL JUL 21 PM 2-36

SAN FRANCISCO CA

- * If this form is used as a cross-complaint, plaintiff means cross-complainant and defendant means cross-defendant.

PLD-C-001

SHORT TITLE: PORTFOLIO RECOVERY ASSOCIATES, LLC v. MARIA CAUDILLO	CASE NUMBER:
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4. (Continued)

b. The true names of defendants sued as Does are unknown to plaintiff.

(1) ☒ Doe defendants (specify Doe numbers): 1 TO 10 were the agents or employees of the named defendants and acted within the scope of that agency or employment.(2) ☒ Doe defendants (specify Doe numbers): 1 TO 10 are persons whose capacities are unknown to plaintiff.c. ☐ Information about additional defendants who are not natural persons is contained in Attachment 4c.d. ☐ Defendants who are joined under Code of Civil Procedure section 382 are (names):5. ☐ Plaintiff is required to comply with a claims statute, anda. ☐ has complied with applicable claims statutes, orb. ☐ is excused from complying because (specify):6. ☐ This action is subject to ☐ Civil Code section 1812.10 ☐ Civil Code section 2984.4.

7. This court is the proper court because

a. ☐ a defendant entered into the contract here.b. ☐ a defendant lived here when the contract was entered into.c. ☒ a defendant lives here now.d. ☐ the contract was to be performed here.e. ☐ a defendant is a corporation or unincorporated association and its principal place of business is here.f. ☐ real property that is the subject of this action is located here.g. ☐ other (specify):

8. The following causes of action are attached and the statements above apply to each (each complaint must have one or more causes of action attached):

☐ Breach of Contract☒ Common Counts☐ Other (specify):9. ☐ Other allegations:

10. Plaintiff prays for judgment for costs of suit, for such relief as is fair, just, and equitable; and for

a. ☒ damages of: \$ 4,845.61b. ☒ interest on the damages(1) ☒ according to proof(2) ☐ at the rate of (specify): percent per year from (date):c. ☒ attorney's fees(1) ☐ of: \$(2) ☒ according to proof.d. ☒ other (specify):

For such other and further relief as the court may deem proper.

11. ☐ The paragraphs of this pleading alleged on information and belief are as follows (specify paragraph numbers):

Date: 07/08/2011

CIR LAW OFFICES, LLP

(TYPE OR PRINT NAME)

(SIGNATURE OF PLAINTIFF OR ATTORNEY)

(If you wish to verify this pleading, affix a verification.)

PLD-C-001(2)

SHORT TITLE:
PORTFOLIO RECOVERY ASSOCIATES, LLC v. MARIA CAUDILLO

CASE NUMBER:

2ND CAUSE OF ACTION—Common Counts

(number)

ATTACHMENT TO ☒ Complaint ☐ Cross - Complaint

(Use a separate cause of action form for each cause of action.)

CC-1. Plaintiff (name): PORTFOLIO RECOVERY ASSOCIATES, LLC

alleges that defendant (name): MARIA CAUDILLO

became indebted to ☒ plaintiff ☐ other (name):a. ☒ within the last four years(1) ☒ on an open book account for money due.(2) ☒ because an account was stated in writing by and between plaintiff and defendant in which it was agreed that defendant was indebted to plaintiff.b. ☒ within the last ☐ two years ☒ four years(1) ☐ for money had and received by defendant for the use and benefit of plaintiff, for work, labor,(2) ☐ services and materials rendered at the special instance and request of defendant and for which defendant promised to pay plaintiff☐ the sum of \$☐ the reasonable value.(3) ☒ for goods, wares, and merchandise sold and delivered to defendant and for which defendant promised to pay plaintiff☒ the sum of \$ 4,845.61☐ the reasonable value.(4) ☒ for money lent by plaintiff to defendant at defendant's request.(5) ☐ for money paid, laid out, and expended to or for defendant at defendant's special instance and request.(6) ☐ other (specify):

for credit card purchases and/or cash advances on the credit account issued by Plaintiff for which Defendant was billed monthly and failed to dispute as required under the Federal Fair Billing Act applicable to such account (15 USC Section et Seq.)

CC-2. \$ 4,845.61, which is the reasonable value, is due and unpaid despite plaintiff's demand,

plus prejudgment interest ☒ according to proof ☐ at the rate of _____ percent per year

from (date):

CC-3. ☒ Plaintiff is entitled to attorney fees by an agreement or a statute☐ of \$☒ according to proof.CC-4. ☐ Other:

Page 4

Page 1 of 1

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS
 MARIA CAUDILLO

(b) County of Residence of First Listed Plaintiff San Diego
 (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)
 Stephen G. Recordon (CSB 91401) 225 Broadway, Ste. 1900, San Diego,
 CA 92101 (619) 232-1717

DEFENDANTS
 PORTFOLIO RECOVERY ASSOCIATES, LLC

County of Residence of First Listed Defendant _____
 (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
 LAND INVOLVED.

Attorneys (If Known)

'12CV200 IEG RBB

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN

- (Place an "X" in One Box Only)
- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
15 U.S.C. § 1692

Brief description of cause:

Violations of the Fair Debt Collection Practices Act and violations of the Rosenthal Act

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

01/25/2012

SIGNATURE OF ATTORNEY OF RECORD

Stephen G. Recordon

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____